

Streamlined Sales Tax Project Exemption Administration Survey

September 22, 2003

States responding: Alabama, Arizona, Georgia, Illinois, Indiana, Iowa, Maine, Maryland, Minnesota, Missouri, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Rhode Island, South Dakota, Vermont, Wisconsin

Survey Questions:

1. Should a state be required to honor an exemption certificate filed by a purchaser if the purchaser is not a resident, resident organization or registered business in that state?

Yes – AL, AZ, IA, IN, ME, MN, MO, NJ, NC, ND, OH, SD, VT, WI

Comments

AL – Only if the purchaser is purchasing for resale and can provide a resale or exemption certificate from the state in which he does business.

IN – Under a simplified system this would be a necessity.

MN – Section 317B says that if a seller obtains a fully completed exemption certificate at the time of sale, the seller is relieved from collecting and remitting the sales tax. Section 317 would need to be amended in order to require a business to question the exemption claimed.

NJ – As a practical matter, registration with the Governing States will register a business for all states. However, for point of sale deliveries, or delivery within a state, a state should not be required to honor the exemption of another.

OH – Assuming the exemption claimed is valid under that state's law.

SD – If the sale is exempt in South Dakota it shouldn't make any difference if the purchaser is not licensed in South Dakota. However, if it wasn't a valid exempt sale, then I am concerned about how I collect tax from an out-of-state person.

No – GA, IL, MD, NV

Comments

GA – We assume that the purchaser takes possession of the product in Georgia and that neither the product nor the purchaser was exempt in Georgia. However, if the seller ships the product to the out of state purchaser then it would be exempt as an export.

IL – This answer assumes that the sale would be sourced to the state where the sale took place. If this were allowed, then states would lose the ability to determine which entities should be provided with tax exemptions. The states would also have a difficult time with enforcement in determining if those persons or entities were properly claiming the exemptions. For example, if this were allowed, what would prohibit a resident or resident organization from presenting an out-of-state exemption certificate even if that person or entity did not qualify under the selling state's laws as being exempt?

Exemption Administration Survey (9/22/2003)
Question 1 continued

Maybe – RI

Comments

RI - A resale certificate should be acceptable anywhere. An exemption certificate should only be accepted if the transaction is exempt in the state that the sale is sourced to.

2. **Should a business located within a particular state be required to accept an exemption certificate filed by a charitable organization if the sale will be sourced to that state (i.e. over the counter sale) and the state does not allow charitable organizations to claim exemption from tax?**

Yes – IN, MN, WI

Comments

IN – Seller must not be required to “police” the exemption.

MN – Section 317B says that if a seller obtains a fully completed exemption certificate at the time of sale, the seller is relieved from collecting and remitting the sales tax. Section 317 would need to be amended in order to require a business to question the exemption claimed.

No – AL, AZ, GA, IA, IL, MD, ME, MO, NV, NJ, NC, ND, OH, RI, SD, VT

Comments

AL – Only the charitable organizations that have obtained a special act from the Alabama legislature are exempt from Alabama sales tax.

IL – The same considerations apply as discussed above for question number 1.

MO – If a sale is sourced to the state and there is no available exemption in that state, then I think a business cannot accept an exemption certificate.

NC – A business should be expected to comply with the laws of a state and a certificate issued by a nonexempt entity should not be valid. We recommend placing a disclosure statement on the certificate advising that all the exemptions listed on the certificate may not apply in every state.

OH – A state should not be required to approve an exemption certificate if the reason claimed for exemption is not valid under the state’s law.

RI – States have different exemptions regarding charitable organizations. This is no different than any other exemption. A retailer that knows that the sale is sourced to a particular state would have to abide by the exemption in that state. This is not a good faith issue.

SD – I think charitable exemptions should be treated differently. We are not all adopting the same exemptions. I am concerned that accepting certificates from a charitable organization outside the state will give that organization the opinion that all of our exemptions are the same.

VT – We should require that the claimed exemption be of a category that exists in the taxing state.

3. Similar to # 2, should a business located within a particular state be required to accept an exemption certificate filed by a charitable organization if the sale is sourced to a location outside the state even if the state does not allow charitable organizations to claim exemption from tax?

Yes – AZ, GA, IA, IL, IN, MD, ME, MN, ND, NJ, SD, WI

Comments

IL – This assumes that the state that issued the exemption certificate would recognize it as a valid exemption certificate. In this instance, the state where the sale takes place would not receive the revenue from the sale even if the sale were subject to tax.

IN – Seller must not be required to “police” the exemption.

MN – Section 317B says that if a seller obtains a fully completed exemption certificate at the time of sale, the seller is relieved from collecting and remitting the sales tax. Section 317 would need to be amended in order to require a business to question the exemption claimed.

MD – My assumption here is that the business in question is required to collect the tax in the state of destination.

SD – I worry that we are going to confuse retailers if we don’t let them accept certificates for over the counter sales but do let them accept the certificates for sales outside the state.

No – AL, MO, NV, NC, OH, RI, VT

Comments

AL – Only the charitable organizations that have obtained a special act from the Alabama legislature are exempt from Alabama sales tax.

MO – If a sale is sourced to a state where there is no applicable exemption, then I don’t see the point in accepting an exemption certificate.

NC – If the sale is sourced to another state from the one that does not exempt the entity, the sale should be exempt as a sale in interstate commerce. If the destination state does not exempt the entity, see our response to #2.

OH – If the sale is sourced outside the state, that state has no claim on the tax – the issue of charitable exemption should not come up at all.

RI – The business needs to abide by the exemption statutes in the state to which the sale is sourced.

VT – I may not understand the question. The business should be required to accept a certificate claiming an exemption valid in the state where the sale is sourced. It should reject a certificate claiming an exemption which does not apply to the state in which the sale is sourced. Whether the state where the vendor is located has a similar exemption should not matter.

4. Should a seller be relieved of the good faith requirement if the seller accepts an exemption certificate with the MPU reason code if the item being purchased is tangible personal property (other than direct mail)?

Yes – GA, MO, NV, SD

Comments

MO – We think the exemption certificate simply shifts the burden of paying the tax to the purchaser. The states can pursue the purchaser for tax. If at a later date the states feel there is significant unpaid tax because of these types of transactions, maybe then we could change our position on this.

SD – I think we need to treat this like any other situation where the buyer has lied or made a mistake. We are making enormous changes in our systems and it will take years before retailers understand all these changes well enough for us to enforce this.

No – AL, AZ, IA, IL, IN, MD, ME, MN, NC, ND, NJ, OH, RI, VT, WI

Comments

AL – Alabama sellers are required to know the general nature of the customer's business.

IL – The MPU is similar to a direct pay certificate. However, each state can set the requirements for issuing specific taxpayers direct pay permits. Any taxpayer can provide an MPU. MPU's should not be allowed for all types of tangible personal property.

IN – Exemption certificate not properly completed.

MD – The MPU does not apply to the sale of tangible personal property. The tax on tangible personal property should be collected at the point of delivery.

MN – The seller is aware of what they are selling to the customer and knows that the customer cannot use the MPU to purchase TPP. Accepting the MPU for non-qualifying items could be considered fraudulent failure to collect tax on the part of the seller.

NJ – A direct pay permit should be used if appropriate, otherwise the appropriate tax should be paid. Currently, the MPU is not intended for TPP. The project will have to decide if its use should be expanded.

NC – The MPU applies to digital goods, computer software delivered electronically and the concurrent use of services. Sellers should be expected to know the use of the certificate.

OH – By its terms, the MPU form cannot be used for general TPP, only for computer software delivered electronically, digital goods, or services, which are concurrently available for use in multiple jurisdictions.

RI – This is a black and white issue not a good faith issue. An MPU can not be used for TPP.

WI – MPU is specific in that it does not apply to TPP except prewritten computer software.

5. Should sellers be required to collect exemption certificates whenever there is a limitation on a product based exemption? For example, a state exempts durable medical equipment for home use only.

Yes – AZ, IL, IN, ME, MN, MO, NV, NJ, NC, OH, SD

Comments

IL – Without this requirement, sellers would likely be selling such items without charging tax on a regular basis regardless of how the customer may use the property. Without the certificate, it may be difficult or impossible in some cases to go after the customer for the tax liability.

IN – The fact that there is a stipulation on the exemption requires that an exemption certificate be filed.

MN – When restrictions apply to the exemption, the seller should obtain an exemption certificate from the purchaser.

NJ – But keep the information required to a minimum. At the same time, the information must be sufficient to insure that the exemption is appropriate.

NC – Unless there is some other documentation required with the sale such as a prescription. Then the prescription should be sufficient.

SD – I think it is appropriate to require everyone to play by the same rules.

No – AL, GA, IA, MD, ND, VT, WI

Comments

AL – The fact that an exemption is specifically provided by statute should be sufficient.

GA – Commodity based exemptions that are extended with limitations should be supported through the transactional information. We should not require additional information unless the exemption has limitations that require additional documentation (i.e. food for off premise consumption, durable medical equipment that is paid for with Medicaid or Medicare funds, etc.).

MD – If entitlement to exemption is obvious from other facts, no certificate should be required.

RI – In order for the CSP to properly charge tax in those situations, the customer is going to have to indicate the use of the item during the ordering process, but a formal certificate should not be required.

VT – They should be allowed to collect and rely on exemption certificates but not necessarily required to. In the medical example, the use can generally be inferred from the circumstances of the sale.

WI – The presumption when billed to an individual should be that it is exempt. If the purchaser uses it for some other purpose, the state must collect from the purchaser.

6. If you answered no to # 5, what records should be required for a seller to prove that sales of certain products are exempt because of the limitation requirements?

Comments

AL – The sale would have to meet certain requirements as provided by Alabama statutes.

GA – The information on the invoice or bill of sale can document most exemptions.

IA – The seller must show that the item qualifies for a product based exemption and that the purchaser qualifies for receipt of the exemption. Invoices or sales tickets that detail the product or purchaser.

MD – The extent to which additional documentation, if any should be required should depend upon the facts and circumstances.

NC – Unless there is some other documentation required with the sale such as a prescription. Then the prescription should be sufficient.

ND – Sales invoice showing customer's name, address, and point of delivery.

RI – Ordering records if available.

VT – Name & address of the purchaser and delivery location would usually suffice. As long as vendors have the option of obtaining an exemption certificate, alternative documentation can be state-specific, and exemption specific. For example, Vermont has a regulation allowing vendors of electricity to presume an exemption for residential use if the charge is made at residential rates.

WI – "Bill to:" on invoice should be to an individual.